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Mohd Hanafi bin Safii v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO P-05–289 OF 2009
ABDUL MALIK ISHAK, CLEMENT SKINNER AND APANDI ALI JJCA
17 DECEMBER 2012

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Criminal Procedure — Trial — Counsel — Whether accused's counsel incompetent — Whether incompetence of such degree as to merit quashing of conviction — Whether trial conducted with undue haste in court's attempt to clear backlog of cases — Whether accused denied of rights at trial — Whether conviction of accused safe

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The appellant ('accused') was convicted and sentenced to death by the High Court for trafficking in 4,363.3g cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). The police found the accused sitting alone on a parked motorcycle in the car park of a hospital. The drugs were recovered from the motorcycle's carrier basket which was covered with a jacket.

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The trial court, inter alia, rejected the accused's defence of 'wilful blindness' and of being an 'innocent carrier' of the drugs. The court found he was not an innocent carrier for anyone else as the characters he created did not exist. The trial court also found that there was no other reason for the accused to be sitting alone in the car park with the drugs at night except to hand the drugs over to someone he was waiting for. The accused was found to have had both actual and mens rea possession of the drugs and to have failed to rebut the statutory presumption of trafficking under s 37(da)(vi) of the DDA. Apart from rehashing the defences he raised at the trial, the accused in his instant appeal against conviction and sentence alleged that his trial was a failure of justice as he was represented by an incompetent counsel and that the court had hurried the conduct of the trial in its effort to clear its backlog of cases.

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Held, dismissing the appeal and affirming the conviction and sentence:

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(1) Even though the Federal Court's decision in *Shamin Reza bin Abdul Samad v Public Prosecutor* [2011] 1 MLJ 471 relied upon by the accused was an eye-opener for a possible quashing of a conviction due to the incompetence of counsel in the conduct of a defence in a criminal trial, the two cardinal conditions for such possibility to happen were that (i) the incompetence must have been flagrant in the circumstances of the given case and (ii) it must have deprived the accused of a fair trial occasioning a miscarriage of justice. The facts in the instant case did not even fall within the first condition aforesaid (see paras 7–8).

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(2) It was clear from the appeal record that at the trial the accused's counsel

was given the opportunity to submit and submissions were made both at the end of the prosecution's case and at the end of the trial. The accused was never deprived of his rights and the trial proceeded in accordance with the law, be it substantive or procedural. As such the accused's submission on his constitutional right to a fair trial was without merits (see paras 9–10).

(3) The appeal record showed that the trial was not conducted with undue haste. From the circumstances of the case and the time-frame within which the trial proceeded and was concluded, there was no reason to justify a claim that the trial was tainted with any irregularity that could have occasioned a failure of justice (see para 20).

(4) The trial court had arrived at its findings correctly, the defence's case was properly and adequately analysed and there was no irregularity or error that could have occasioned a failure of justice at the trial. The evidence against the accused was overwhelming and there was no plausible reason to disturb the trial court's decision. The accused's conviction was obviously safe (see para 21).

[Bahasa Malaysia summary

Perayu ('tertuduh') telah disabitkan dan dijatuhkan hukuman mati oleh Mahkamah Tinggi kerana mengedar 4,363.3g kanabis, satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Polis telah menjumpai tertuduh duduk seorang diri di motosikalnya yang diletakkan di tempat letak kereta sebuah hospital. Mahkamah bicara, antara lain, menolak pembelaan 'kebutaan sengaja' oleh tertuduh dan 'pembawa tidak salah' dadah tersebut. Mahkamah mendapati bahawa dia bukan pembawa tidak salah bagi orang lain kerana watak-watak yang direkanya tidak wujud. Hakim bicara juga mendapati bahawa tidak terdapat alasan untuk tertuduh duduk seorang diri di tempat letak kereta dengan dadah tersebut pada waktu malam kecuali untuk memberikan dadah tersebut kepada seseorang yang sedang ditunggunya. Tertuduh didapati mempunyai kedua-dua mens rea sebenar dan milikan ke atas dadah tersebut dan telah gagal untuk mematahkan anggapan statutori pengedaran di bawah s 37(da)(vi) ADB. Selain daripada membangkitkan semula pembelaan-pembelaan yang telah dibangkitkan olehnya semasa perbicaraan, tertuduh dalam rayuan terhadap sabitan dan hukumannya ini, mendakwa bahawa perbicaraannya merupakan suatu kegagalan keadilan kerana dia telah diwakili oleh seorang peguam yang tidak kompeten dan mahkamah telah mempercepatkan perjalanan perbicaraan sebagai langkah untuk mengemaskini longgokan kes-kes.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Walaupun keputusan Mahkamah Persekutuan dalam *Shamin Reza bin Abdul Samad v Public Prosecutor* [2011] 1 MLJ 471 yang dirujuk oleh

A tertuduh membuka mata kepada kemungkinan pembatalan sabitan disebabkan peguam yang tidak kompeten dalam pembelaan semasa perbicaraan jenayah, dua syarat utama untuk kemungkinan tersebut berlaku adalah bahawa (i) ketidakkompetenan tersebut mestilah secara terang-terangan dalam hal keadaan kes; dan (ii) ia mestilah telah menafikan tertuduh daripada perbicaraan yang adil, menyebabkan ketidakadilan. Fakta dalam kes ini tidak pun terjumlah di bawah syarat pertama yang dinyatakan (lihat perenggan 7–8).

(2) Adalah jelas daripada rekod rayuan bahawa semasa perbicaraan, peguam tertuduh telah diberikan peluang untuk mengemukakan hujahan dan hujahan-hujahan kedua-duanya dibuat pada akhir kes pendakwaan dan pada akhir perbicaraan. Tertuduh tidak pernah dinafikan haknya dan perbicaraan dijalankan selaras dengan undang-undang, sama ada secara substantif atau prosedur. Dengan itu, hujahan tertuduh mengenai hak perlembagaannya bagi suatu perbicaraan yang adil adalah tidak bermerit (lihat perenggan 9–10).

(3) Rekod rayuan menunjukkan bahawa perbicaraan tidak dijalankan dengan tergesa-gesa. Berdasarkan hal keadaan kes dan tempoh masa perbicaraan dijalankan dan diputuskan, tidak terdapat sebab untuk menjustifikasikan dakwaan bahawa perbicaraan tersebut dicemari dengan salah aturan yang mungkin boleh menyebabkan kegagalan keadilan (lihat perenggan 20).

(4) Mahkamah bicara telah membuat dapatan-dapatan dengan tepat, kes pembelaan telah dianalisa dengan betul dan secukupnya dan tidak terdapat salah aturan atau khilaf yang boleh memungkinkan berlakunya kegagalan keadilan semasa perbicaraan. Keterangan terhadap tertuduh adalah cukup banyak dan tidak terdapat alasan munasabah untuk campur tangan keputusan mahkamah bicara. Sabitan tertuduh adalah jelas selamat (lihat perenggan 21).]

Notes

H For a case on counsel, see 5(2) *Mallal's Digest* (4th Ed, 2012 Reissue) para 5314.

Cases referred to

Lee Kwan Woh v PP [2009] 5 MLJ 301; [2009] 5 CLJ 631, FC (refd)

I *Shamin Reza bin Abdul Samad v PP* [2011] 1 MLJ 471; [2009] 6 CLJ 93, FC (refd)

Tan Hun Wah v PP and another appeal [1994] 1 MLJ 382; [1994] 1 AMR 113, SC (refd)

Zulfikar bin Mustaffah v PP [2001] 1 SLR 633, CA (refd)

Legislation referred to

Criminal Procedure Code s 422
Dangerous Drugs Act 1952 ss 37(d), (da), (da)(vi), 39B(1)(a)

Ranjit Singh Dhillon (Hussaini & Co) for the appellant.
Farah Ezlin bt Yusof Khan (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Apandi Ali JCA:

INTRODUCTION

[1] The appellant was convicted and sentenced to death for an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 by the High Court in Penang. The charge against the appellant at the Penang High Court reads as follows:

> Bahawa kamu pada 11 Disember 2004, jam lebih kurang 9.15 malam di kawasan tempat letak kereta Hospital Seberang Jaya, Bukit Mertajam, dalam daerah Seberang Perai Tengah di dalam negeri Pulau Pinang telah mengedar dadah berbahaya iaitu cannabis seberat 4363.3 gram dan dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] The appellant appealed against his conviction and sentence. On appeal, this court dismissed his appeal and affirmed the conviction and sentence imposed by the High Court.

[3] The facts of the case are well set out in the judgment of the High Court and we do not propose to repeat them here. Nevertheless, the salient facts are very simple: the appellant was caught while he was sitting alone on a parked motorcycle. Upon examination of the carrier basket of the motorcycle (which was covered with a black jacket), the police found a bag with five slabs of cannabis. In the same carrier basket a waist-pouch containing personel items of the appellant was also found.

[4] In view of such salient facts, the legal issues pertaining to this appeal are all settled law.

CONTENTIONS BY THE APPELLANT

[5] *The main ground*: Learned counsel for the appellant in his submissions before this court argued that his main complaint is the incompetency of the

A counsel who conducted the defence of the appellant at the trial in the High Court. Learned counsel further submitted that as a result of the incompetency of the counsel it has resulted in a miscarriage of justice. In support of his argument learned counsel cited the Federal Court cases of *Shamin Reza bin Abdul Samad v Public Prosecutor* [2011] 1 MLJ 471; [2009] 6 CLJ 93 and *Lee* B *Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301; [2009] 5 CLJ 631.

[6] Learned counsel also, in his written submission, wrote that the trial of the appellant was an 'illegality' which is caught under s 422 of the Criminal Procedure Code. Counsel was complaining that the trial was done in haste. On C this point (at p 17 of his written submission) learned counsel wrote as follows:

> One cannot help but wonder, were we not in a haste to complete trial proceedings at all costs, in short, the KPI system, the learned trial Judge would, if his hands were not manacled by the system, stopped the trial and requested that new counsel be assigned to this case. The whole temperance of his reasoning was actually a vain cry D for competent counsel to step in. However, that said, the system works but flaws such as these were allowed to go unnoticed in the rush hour traffic.

[7] On the main issue of incompetency of counsel at the trial, we are of the E considered view that eventhough the case of *Shamin Reza* is an eye-opener for a possible quashing of a conviction due to the incompetence of counsel in the conduct of a defence in a criminal trial, the Federal Court has correctly put in place two cardinal conditions for such possibility, which reads as follows:

F ln our considered judgment, the incompetence of counsel in the conduct of a defence in a criminal trial is a ground on which a conviction may be quashed provided that (i) such incompetence must be flagrant in the circumstances of the given case; and (ii) it must have deprived the accused of a fair trial thereby occasioning a miscarriage of justice. Nothing short will suffice. And in considering the question, an appellate court must have regard to the conduct of counsel as a G whole and not merely to his or her failure in one or two departments. Further, in the ordinary way, a court whether at first instance or at the appellate state will of course have regard to its paramount function and duty to ensure that justice is done so that the incompetence of counsel will not factor into equation. As the Federal Court said in *Wong Lai Fatt v Public Prosecutor* [1973] 1 LNS 175:

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> The paramount function and duty of the courts is to see that justice is done in all cases. As stated by Lord Denning MR in *Doyle v Olby Ltd* [1969] 2 QB 159 at p 166:
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> > We never allow a client to suffer for the mistake of his counsel if we can I possibly help it. We will always seek to rectify it as far as we can. We will correct it whenever we are able to do so without injustice to the other side.

[8] The facts of this case does not even fall within the first condition laid

down in *Shamin Reza*. As to the authority of *Lee Kwan Woh v Public Prosecutor* the facts of this case does not apply as the rationale of *Lee Kwan Woh* is that an accused person has the right to waive making a submission but he cannot be deprived of his right to make a submission at the end of the prosecution's case. The Federal Court in *Lee Kwan Woh* through the judgment of Gopal Sri Ram FCJ, inter alia, wrote:

> Drawing the threads together, it is clear from the authorities that it is a fundamental right guaranteed by art 5(1) that a person's life (in its widest sense) or his or her personel liberty (in its widest sense) may not be deprived save in accordance with State action that is fair both in point of procedure and substance. Whether an impugned State action is substantively or procedurally fair must depend on the fact pattern of each case. However, when the principle is applied to a criminal case, what it means is that an accused has a constitutionally guaranteed right to receive a fair trial by an impartial tribunal and to have a just decision on the facts. If there is an infraction of any of these rights, the accused is entitled to an acquittal. Whether there has been a fair trial by an impartial tribunal or a just decision depends on the facts of each case. While upon the subject under discussion we would refer with approval to the judgment of Edger Joseph Jr J (as he then was) in *Public Prosecutor v Choo Chuan Wang* [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 329, where he held that:
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> > Article 5(1) of our Constitution does imply in favour of an accused person the right to a fair hearing within a reasonable time by an impartial court established by law. It follows that if an accused person can establish a breach of this right then, in the words of Sandhawalia CJ in *Madheshwardhari Singh v The State (ibid) (Madheshwardhari Singh and Anor v State of Bihar* [1986] AIR (Pat) 324), he would be entitled to an unconditional release and the charges levelled against him would fall to the ground.
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> We must consider the impact of what we have said thus far on the facts of the instant case. In our judgment, the constitutionally guaranteed right in an accused to a fair trial includes his right to make a submission of no case at the close of the prosecution's case. It is a right that he or she may waive. But he or she cannot be deprived of it. That unfortunately is what happened here. The accused accordingly did not have a fair trial and art 5(1) was violated. Following *Public Prosecutor v Choo Chuan Wang* he is entitled to have his conviction set aside on this ground. We would add that the view expressed by Bellamy J in *Public Prosecutor v H Parnaby* [1953] MLJ 163; [1953] 1 LNS 73 that a trial court is not bound to hear submissions at the close of the prosecution case is not correct. Neither are the decisions that have followed it, namely *Public Prosecutor v Chong Boo See* [1988] 3 MLJ 292; [1988] 1 CLJ 679; [1988] 2 CLJ (Rep) 206 and *Public Prosecutor v Wong Kok Wah* [2000] 1 MLJ 609; [2000] 1 CLJ 217. In our judgment, a trial court must, at the close of the prosecution case, invite submissions from an accused. It is then open to the accused to say that he or she does not wish to make a submission. But if he or she does not make that election, he or she must be heard. It is however open to the court, after it has heard those submissions to reject them and call for the defence without affording the prosecution a right to reply. This course does no harm to the prosecution. But what the trial court cannot lawfully do is to deprive an accused of his

A constitutionally guaranteed right to a fair trial by denying him or her of the opportunity to make a submission of no case.

[9] However in our case at hand, it is clear from the appeal records that at the trial in the High Court learned counsel for the appellant was given the opportunity to submit and submissions were made, both at the end of the prosecution's case and the end of the trial. The appellant has never been deprived of his rights and wherefore the trial proceeded in accordance to the law, be it on substantive or procedural law. As such the appellant's submission on his constitutional right to a fair trial is without merits.

[10] On the issue of trial in haste, in pursuit of the KPI objectives, it is our finding that the appeal records showed otherwise. From the records, it is clear that the chronology of the trial are as follows:

(a) the trial commenced with the calling of the first prosecution witness on 18 August 2009;

(b) the prosecution closed its case on 10 September 2009 and parties filed written submissions and made oral submissions on the same day;

(c) the learned judicial commissioner gave his decision, at the end of the prosecution's case, by calling for defence on 18 September 2009;

(d) defence commenced on 7 October 2009 and the trial ended on same day, where both parties made submissions at the end of the trial on the same day; and

(e) the learned trial judicial commissioner gave his decision on 9 October 2009, by delivering a 49 – page judgment.

[11] From the above sequence of events of the trial, we are of the considered view that the trial was not conducted with undue haste. It was reasonable in the circumstances.

[12] On the other hand, in criminal jurisprudence there is a right to a speedy trial. This can, of course be seen in the often quoted saying: 'Justice delayed is justice denied'. On this, see *Tan Hun Wah v Public Prosecutor and another appeal* [1994] 1 MLJ 382; [1994] 1 AMR 113, Supreme Court. From the appeal records too, we note that the appellant has been remanded from the date of his arrest, ie on 11 December 2004 and the case was transferred to the High Court on 25 May 2005.

[13] From the circumstances of the case and the time frame the trial proceeded and concluded, we see no reason to justify any claim that the trial was tainted with any irregularity that could have occasioned a failure of justice.

OTHER CONTENTIONS BY THE APPELLANT

[14] As we had stated earlier, based on the facts of the case the legal issues pertaining to this appeal are all settled law. The legal issues submitted by learned counsel for the appellant, includes the following issues:

(a) the appellant was an innocent carrier;

(b) that he acted with 'willful blindness'; and

(c) that the evidence of the appellant has rebutted the presumption of trafficking under s 37(da) of the Dangerous Drugs Act 1952.

[15] On all the above-said issues, suffice for us to say that having perused the notes of evidence and the grounds of judgment by the learned judicial commissioner ('JC'), we conclude that the learned JC had fully considered the issues and made his findings and conclusions in a proper manner, to the effect that we have no reason to disagree with his conclusions. We also find no reason to disturb the findings of fact by the learned JC as the core evidence that unfolded the evidence prior to the arrest of the appellant were the evidence of SP5, Supt Wan Azmy bin Wan Hashim and SP6, Sarjan Mejar Raja a/l Govindasamy. The evidence of SP5 and SP6 were not seriously challenged during their cross-examinations and wherefore the evidence remained intact as their credibility had not been shaken.

[16] On the finding of a prima facie case, at the end of the prosecution's case, the learned JC wrote in his grounds of judgment, as follows:

> 54. Berpandukan kepada panduan dan prinsip undang-undang yang diberikan oleh kes-kes yang telah disebutkan di atas, mahkamah ini setelah menimbangkan kes pendakwaan secara penilaian maksima *berpuashati bahawa dadah terlibat berada di bawah jagaan dan kawalan OKT semasa serbuan dan tangkapan OKT*. Mahkamah berpuashati bahawa tiada mana-mana orang lain berada bersama OKT semasa tangkapan dan jumpaan dadah tersebut. Pihak pembelaan juga tidak mengatakan terdapatnya mana-mana orang lain berada bersama OKT sebelum, semasa dan selepas tangkapan OKT. Mahkamah juga berpuashati bahawa OKT telah berada di tempat letak kereta tersebut pada waktu yang disebutkan dalam pertuduhan dengan dadah terlibat yang berada di dalam beg P15 yang kandungannya dengan mudah boleh dibuka dan dilihat oleh OKT. *Mahkamah mendapati OKT mempunyai milikan ke atas dadah tersebut*. Dari keterangan yang telah mahkamah ini huraikan di atas adalah juga dapatan oleh mahkamah ini bahawa OKT punyai pengetahuan ke atas dadah tersebut. Adalah suatu *affirmative finding* oleh mahkamah ini bahawa OKT mempunyai milikan sebenar (*actual possession*) ke atas dadah tersebut. Di atas dapatan tersebut pihak pendakwaan tidak perlu bergantung kepada anggapan di bawah s 37(d) atau 2 Akta Dadah Berbahaya 1952 (*Public Prosecutor v Abdul Rahman Akif* [2007] 5 MLJ 1; [2007] 4 CLJ 337; *Public Prosecutor v Abdul Manaf Muhamad Hassan* [2006] 3 MLJ 193; [2006] 2 CLJ 129; *Public Prosecutor v Tan Tatt Eek* [2005] 2 MLJ 685; [2005] 4 CLJ 460).

A 55. Memandangkan dadah terlibat melebihi jauh daripada berat minima statutori iaitu 200g, maka peruntukan anggapan pengedaran di bawah s 37(da)(vi) Akta Dadah Berbahaya 1952 sekali gus dibangkitkan dan terpakai. Dengan melihat jumlah berat dadah terlibat iaitu 4363.3g ianya jelas tidak dimaksudkan bagi tujuan kegunaan sendiri (lihat panduan dari kes *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64 dan *Public Prosecutor v Abdul Rahman Akif*). Dengan keterangan yang ada dan berat dadah terlibat itu, milikan OKT ke atas dadah terlibat adalah suatu 'mens rea possession' (*Chan King Yu v Public Prosecutor* [2006] 6 MLJ 128; [2006] 3 CLJ 853).

C 56. Di dalam mencapai dapatan di atas, mahkamah juga berpuashati bahawa pihak pendakwaan telah membuktikan berat dan jenis dadah terlibat seperti yang telah dihuraikan awalnya oleh keterangan SP8 (ahli kimia), serta pengendalian dan jagaan selamat barang kes iaitu dadah terlibat yang tidak ada berlaku mana-mana kelompangan di dalam pengendaliannya dari tempoh ia dijumpai hingga dikemukakan di mahkamah ini.

D 57. Di atas huraian dan dapatan tersebut, mahkamah ini berpuashati bahawa pihak pendakwaan telah berjaya membuktikan semua unsur pertuduhan dan membuktikan satu kes prima facie terhadap tertuduh seperti di pertuduhan. Mahkamah dengan ini memerintahkan OKT membela diri ke atas pertuduhan tersebut.

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[17] On the issue of 'innocent carrier', the learned JC had succinctly dealt with it when, in his grounds of judgment, he wrote as follows:

F [85] Adakah OKT hanya seorang 'innocent carrier'? Beberapa kes terdahulu boleh dijadikan panduan dalam membincangkan isu 'innocent carrier'. Kes-kes tersebut di antaranya *Public Prosecutor v Yeo Kwee Huat* [2007] 5 MLJ 365; [2007] 5 CLJ 126; *Public Prosecutor lwn Hoh Bon Tong* [2008] MLJU 281; [2008] 1 LNS 232; *Public Prosecutor lwn Ridwan Rusli* [2007] MLJU 480; [2007] 1 LNS 238; *Public Prosecutor v Burhanuddin Bardan* [2007] MLJU 520; [2007] 1 LNS 359. Mahkamah juga merujuk kepada kes *Public Prosecutor v Tan Kok An* yang juga G melihatkan unsur pembelaan 'innocent carrier'. Seperti yang mahkamah ini telah putuskan bahawa watak Pakcik Md Ali dan Lebai Man sebenarnya tidak wujud, maka ia menjadikan OKT bukanlah seorang 'innocent carrier' bagi pihak Pakcik Md Ali. Mahkamah ini berpendapat kehadiran OKT di lot parking yang samar tersebut pada jam 9.15 malam tersebut dan menunggu di situ dengan dadah terlibat H berada di dalam beg P15 yang ditutupi oleh jaket P11 adalah bagi tujuan membuat serahan ke atas dadah tersebut kepada seseorang. Tidak ada sebab untuk OKT jika hanya membawa beg berisi pakaian untuk hanya menunggu di situ. Oleh yang demikian mahkamah dengan ini dengan hormatnya tidak dapat menerima penghujahan peguam yang bijaksana yang menghujahkan bahawa OKT hanyalah I seorang 'innocent carrier'.

[18] The issue of 'willful blindness' has also been dealt with, at length by the learned JC. This can be seen from paras 79–84 of his grounds of judgment. We agree with his conclusions on this issue but in addition to that, it is our

judgment that we wholly agree with the rationale in the Singapore Court of Appeal decision in *Zulfikar bin Mustaffah v Public Prosecutor* [2001] 1 SLR 633, at pp 641–642, which reads as follows:

> It is thus not enough for an accused merely to assert absence of knowledge. The facts of the case must be examined as a whole to see whether he had good reason to suspect that he was carrying drugs. In *Yieo Choon Huat v Public Prosecutor* [1998] 1 SLR 217, this court held (at pp 226–227):
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> > *In short, ignorance is a defence only when there is no reason for suspicion and no right and opportunity of examination; ignorance simpliciter is not enough: Ubaka v Public Prosecutor* [1995] 1 SLR 267. In the instant case, the appellant's suspicions must have been aroused by the surreptitious way in which Ah Soon had placed the bag in the appellant's car without his knowledge and had called to inform the appellant about the bag only after the appellant had cleared the customs checkpoint and entered Singapore. In the circumstances, one would have thought it incumbent on the appellant to open up the bag to ascertain its true contents. The appellant also had ample opportunity to examine the contents of the bag. Yet, upon opening up the bag to find it filled with packets wrapped in brown paper, the appellant had not displayed any further interest in the contents of the packets and had gone on to deliver the bag to Koh without question … The appellant's suspicions must have been aroused by this time, and his apparently nonchalant reaction to having discovered all these alien items in his car simply defies logic and credulity. (Emphasis added.)

[19] On the issue of rebuttal of presumption of trafficking, the learned JC had correctly identified the law and the burden of proof. He had also correctly analysed the evidence of the defence and properly tested them with the evidence of the prosecution. We could not find any fault in the approach adopted by the learned JC on this issue.

OUR FINDINGS AND CONCLUSION

[20] Having examined the evidence before us, upon perusal of the learned JC's grounds of judgment and upon hearing submissions from both parties, we hold that:

(a) the High Court was correct in arriving at its findings, at the end of the prosecution's case, that the prosecution had established a prima facie case and in calling the appellant to enter his defence;

(b) the defence was properly and adequately analysed and considered by the learned JC, who correctly came to the conclusion that the appellant failed to cast any reasonable doubt on the prosecution's case; and

(c) there has not been a hurried trial and that there is no irregularity or error at the trial that could have occasioned a failure of justice.

A **[21]** On the evidence adduced at the trial, we find that the evidence against the appellant is overwhelming. In that light, we find that the trial court had come to a correct decision and thus we find no plausible reason to disturb the decision. We also conclude that the conviction of the appellant is obviously safe.

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[22] For the above reasons, we unanimously dismissed the appeal by the appellant. The conviction and sentence by the High Court is therefore affirmed.

C *Appeal dismissed and conviction and sentence affirmed.*

Reported by Ashok Kumar

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